

STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

KEENE STATE COLLEGE EDUCATION	:	
ASSOCIATION, NHEA/NEA	:	
Complainant:	:	
	:	CASE NO. U-0601:2
and	:	
	:	DECISION NO. 780051
UNIVERSITY SYSTEM OF NEW HAMPSHIRE,	:	
KEENE STATE COLLEGE	:	
Respondent :	:	

APPEARANCES

Keene State College Education Association:

David Smith, UniServ Director, NHEA  
Christopher Barnes, Librarian

University System of New Hampshire:

Nicholas DiGiovanni, Jr., Esquire, Counsel  
Gary Wulf, Executive Director

BACKGROUND

This case arises out of the charges by the Keene State College Education Association affiliated with NHEA/NEA that Keene State College and the University System of New Hampshire violated RSA 273-A:5 (1) (a), (e) and (g) in that the University System removed or attempted to remove a member of the faculty bargaining unit from that unit and/or deny a member of the faculty bargaining unit his rights to vote in a faculty unit election at Keene State College. Specifically, the allegation is that the University System, following the initial hearings on unit determination, a Supreme Court case on unit determination decided February 18, 1977 by the New Hampshire Supreme Court, initial and run off election pre-trial conference procedures involved in each, sought to have Christopher Barnes, one of the librarians at Keene State College, considered a PAT and removed from the eligible voting list for a decertification election sought by certain faculty members at Keene State College. It is alleged by the Keene State College Education Association that this action is an unfair labor practice in that it seeks to unilaterally change the composition of the bargaining unit, denying Mr. Barnes the rights which have been determined at several levels to be his, and must not be allowed. The University System of New Hampshire maintains that it was clerical oversight that resulted in Mr. Barnes' voting in the prior elections, caused the neglecting of challenging his name when it appeared on prior voting lists, and that he has been classified as a PAT staff member at the University for a period of two years or more, was included on the voting list for PAT staff (although it appears he did not vote and that any vote would have been challenged in a PAT election) and that he should not be included in the faculty or it would violate the University's asserted right to classify its employees as it sees fit.

The Board held a hearing on the charges on November 29, 1978 at the Boards offices in Concord. All parties were present and were afforded an opportunity to be heard.

#### FINDINGS AND FACT

The Board finds as a matter of fact established at the hearing that Christopher Barnes was appointed as a librarian at Keene State College. He has worked as a librarian at the college for an extended period of time and in fact has had a tenure since 1970 with the faculty rank of Associate Professor. Professor Barnes was included on the list for faculty eligible to vote in all previous Keene State College faculty elections under RSA 273-A, the question of librarians having been decided by the Board in connection with the initial unit determination for faculty at Keene State College, Plymouth State College and the University of New Hampshire. That decision was appealed to the New Hampshire Supreme Court in the case University System of New Hampshire v. State of New Hampshire et al decided February 18, 1977 117 N. H. (1977) which found, in part, as follows:

"Librarians: In determining an appropriate bargaining unit the PELRB is to take into consideration the principle of community of interest RSA 273-A:8 I (supp. 1975). ...Community of interest is a virtually universal standard for determining appropriate units in both the public and private sectors... The PELRB found that librarians are given faculty rank and tenure based on qualifications and share on the same benefits as faculty members; that they participate in a measurable degree in the related teaching process; and that (a) community of interest with academic faculty is apparent... These findings were supported by testimony... The decision of the PELRB that librarians share a community of interest with the other faculty so as to be included in a bargaining unit of academic faculty members is based on evidence in the record and constitutes a reasonable interpretation and application of RSA 273-:8 (supp. 1975) to the facts of the case."

The University System of New Hampshire classified Mr. Barnes as a professional-administrative-technical employee (PAT) and gave him a certain PAT classification in 1976. He thereafter held a "dual status" in the eyes of the System both as a faculty member and a PAT employee. Barnes never acceded to the fact that he was a PAT member, fearing that it would cost him his faculty status or rank. Such faculty status is an important matter on campus and tenure is also of great importance to faculty and other persons on a college campus. It is more than a "merit badge". Nevertheless, Barnes continues to be classified as a PAT employee by the University System of New Hampshire for its internal pay and benefit purposes. The University System, however, never challenged Barnes' right to vote in any previous election and Barnes did not in fact vote in the PAT election held on the Keene State College campus. Therefore, as a matter of fact, Barnes was a member of the faculty bargaining unit from the date of the initial unit determination as a tenured faculty member at Keene State College, continues to be in the unit and the Board cannot find that there was any doubt or reasonable doubt in the minds of anyone as to his status as a member of the unit throughout the election process until the time referred to in the unfair labor practice charge. It is important to note that Barnes was accepted as a faculty member by other faculty and was in fact elected to the faculty senate at Keene State College as one of the faculty at-large members.

RULINGS OF LAW

The University System of New Hampshire at the hearing alleges that it is not trying to change the composition of a bargaining unit previously determined. The Board cannot accept that characterization since throughout the unit determination process, the Supreme Court case appealing that decision, the pre-election conferences held prior to elections, the election process and challenges thereof and all other procedures before the Board librarians were included in the faculty bargaining unit as having a community of interest with other faculty and it was never alleged that there were different kinds of librarians. The Board has held in other decisions that management has the right under the statute to do its job and manage its operations and can without committing an unfair labor practice change the tasks and titles of employees, eliminate positions, and take other action necessary to manage its operations as long as said decisions are taken in good faith and not with any anti-union bias. In this case, however, the job of librarian held by Mr. Barnes has not changed, the functions of that job have not change, the individual holding the job has not changed throughout the unit determination and election process. Only the classification of the job in question, an action taken unilaterally by the employer, is alleged to require the elimination of the individual from the bargaining unit.

This Board determined the unit as required by law, based on the community of interest of employees. Community of interest does not depend on the classification of employees by the employer although that factor might have relevance in some cases. There is no need to recount all the elements of community of interest since that has been done elsewhere by the courts and this Board. However, it should be pointed out that there are instances where certain PAT members are not in the bargaining unit with other PAT members and the fact that the University has classified someone in the faculty bargaining unit as a PAT does not make his inclusion either illogical or fatal if the elements of community of interest have been challenged. The classification system as a PAT affects pay scales, benefits and the like. The effect of including the PAT classified member in the faculty unit for bargaining, given the election of an exclusive bargaining representative, is that the parties are required to bargain over the wages, hours and terms and conditions of employment of that employee along with all other faculty and any ramification of the classification inconsistent with that bargaining can be resolved at the bargaining table by the representatives of the parties.

The Board has not found in this decision that the University is unable to classify employees for its internal purposes. What the Board has found is that employees found to have a community of interest with others and placed in a bargaining unit for collective bargaining are in that unit regardless of any unilateral classification plan and bargaining must take place on the required subjects concerning those employees as a unit. If the classification system imposed by the employer were to control the membership of the bargaining unit, the employer could control that composition unilaterally which is not a result contemplated by RSA 273-A. The personnel system and classifications of the University System of New Hampshire are given no special protection in RSA 273-A. Therefore, to the extent that the classification system is inconsistent with unit determination, that classification system must give way.

The Board finds it is too late in the day to redefine the unit of faculty at Keene State College. The unit is set and all librarians are included in that unit, including Christopher Barnes.

ORDER

The Board issues the following order:

The Board finds Christopher Barnes is a member of the faculty bargaining unit at Keene State College and he shall be allowed to vote as a member of that unit in any elections and collective bargaining between the parties shall include bargaining over his wages, hours and terms and conditions of employment. The University System of New Hampshire shall cease and desist any efforts to interfere with his rights as determined under this order.

A handwritten signature in dark ink, reading "Edward J. Haseltine", written over a horizontal line.

EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 3rd day of January, 1979

Board Members Cummings and Anderson also present. All concurred.  
Board members Allman and Moriarty were not present and took no part in the consideration or decision of this matter.